# TRANSCRIPT OF RECORD.

## UPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 376.

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ELIZABETH NOBLES, BY HER NEXT FRIEND, W. W. BAUGHN, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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FILED MAY 17, 1897.

(16589.)

V

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1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorables the judges of the supreme court of the State of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity or the said State in which a decision could be had in said suit between Elizabeth Nobles, by her next friend, W. W. Baughn, plaintiff in error, and the State of Georgia, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or

2 statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

Allowed by

JOHN M. HARLAN,
*Asso. Justice Sup. Ct. U. S.*

April 15th, 1897.
Filed in office Apr. 21, 1897.

Z. D. HARRISON,
*C. S. C., Ga.*

3 UNITED STATES OF AMERICA, ss:

To The State of Georgia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the

supreme court of the State of Georgia, wherein Elizabeth Nobles, by her next friend, W. W. Baughn, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this 15th day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN M. HARLAN,
*Associate Justice of the Supreme Court of the United States.*

4 On this 20th day of April, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared Cuyler Smith before me, the subscriber, Z. D. Harrison, clerk of the supreme court of Georgia, and makes oath that he delivered a true copy of the within citation, on this April 20, 1897, to Frank Callaway, private sec'ty of Hon. W. Y. Atkinson, governor of Georgia, at the executive office, in the capitol in Atlanta, the said governor of Georgia being absent from and beyond the limits of the State.

CUYLER SMITH.

Sworn to and subscribed the 20 day of April, A. D. 1897.

[SEAL.] Z. D. HARRISON,
*Clk. S. C. Ga.*

Due and legal service of the within and foregoing citation on writ of error in case of Elizabeth Nobles, by W. W. Baughn, next friend, etc., vs. State of Georgia, is hereby acknowledged, and all further service in said case is waived.

This April 20, 1897.

J. M. TERRELL,
*Attorney-General of the State of Georgia and of Counsel for Deft. in Error.*

Filed in office Apl. 21, 1897.

Z. D. HARRISON,
*C. S. C. Ga.*

5 To Honorable Edward D. White, Associate Justice of the United States Supreme Court, assigned to the fifth judicial circuit:

The petition of W. W. Baughn, here appearing as next friend of Elizabeth Nobles, she being now insane and mentally incapacitated to take any steps in her own behalf, respectfully showeth the following facts:

1. Petitioner and said Elizabeth Nobles are citizens of Georgia and of the United States.

2. Said Elizabeth Nobles is now confined in the common jail of Bibb County under a conviction for murder in the superior court of Twiggs County at a special term of said court held in July, 1895, at which term she was indicted, tried, and convicted of murder, and upon the verdict of guilty was sentenced to death by the court, which sentence was legally

superseded, pending certain proceedings in the courts, till the 23rd day of June, 1896, when she was brought again into said superior court of Twiggs County to be sentenced to death, at which time petitioner, acting in her behalf as her next friend, she being mentally incapacitated at the time to take any steps in her own behalf, objected to the imposition by the court of the sentence of death upon her, for the reason that she was then insane, and objected in open court by written motion, duly verified and supported by affidavits, which objections and motions the court then and there overruled; and the court then and there imposed upon the said Elizabeth Nobles the sentence of death, fixing the date of her execution for August 7th, 1896. Both of said counties are in the western division of the southern district of Georgia.

3. And immediately after the imposition of said sentence of death, petitioner, acting in behalf of said Elizabeth Nobles as her next friend, she being mentally incapacitated at the time to take any steps in her own behalf, objected to the execution of said sentence of death upon her, for the reason that she was then insane, and objected in open court by
6 written motion, duly verified and supported by affidavits, which objections and motion the court then and there overruled and denied.

4. There is a provision in the law of Georgia for the trial of the issue of insanity raised in capital cases after conviction, and is contained in section 4666 of the Code of Georgia (1882), which section is as follows:

"If, after any convict shall have been sentenced to the punishment of death, he shall become insane, the sheriff of the county, with concurrence and assistance of the ordinary thereof, shall summon a jury of twelve men to inquire into such insanity; and if it be found, by the inquisition of such jury, that such convict is insane the sheriff shall suspend the execution of the sentence directing the death of such convict, and make report of the said inquisition and suspension of execution to the presiding judge of the district, who shall cause the same to be entered on the minutes of the superior court of the county where the conviction was had. And at any time thereafter when it shall appear to the said presiding judge, either by inquisition or otherwise, that the said convict is of sound mind the said judge shall issue a new warrant directing the sheriff to do execution of the said sentence on said convict at such time and place as the said judge may appoint and direct in the said warrant, which the sheriff shall be bound to do accordingly. And the said judge shall cause the said new warrant and other proceedings in the case to be entered on the minutes of the superior court."

5. The said motions, one presented prior to and in abatement of judgment, and the other subsequent to judgment and in abatement of execution, averred that said Elizabeth Nobles was then insane, and alleged in substance that said section 4666 did not constitute a judicial tribunal for the trial of such issue, and did not afford due process of law for that purpose:

7 (a) Because due process of law is law administered in a judicial tribunal, and this is not a judicial tribunal.

(b) Because it is essential to due process of law that a jury be empanelled in the court where the conviction was had, and where the jurisdiction of the crime and the criminal is and remains.

(c) Because the trial of the question is a function of the superior court of Twiggs County, where the conviction was had, and a trial in said court is essential to due process of law.

(d) Because the inquisitorial proceedings contemplated by said section do not take place in any court of Georgia.

(e) Because no rules of evidence or method of procedure and for the drawing, summoning, and empaneling a jury and for the subpœnaing and examination of witnesses is provided.

(f) Because no judge or presiding officer is charged with the function of ruling in or out such evidence as may be tendered for the ascertainment of insanity.

(g) Because no judge or presiding officer is provided by said inquisitorial proceedings to instruct the jury on the law of the issues raised and involved.

(h) Because the law provides no method of moving for a new trial before said inquisition or of correcting any errors which may take place in said proceedings.

(i) Because said proceeding is one not known to the common law for the ascertainment of the facts involved, according to the settled principles of the law of the land.

(j) Because the supreme court of Georgia has held that said proceeding is not a judicial proceeding, but is a mere inquisition from which there is no appeal.

(k) Because no manner of review whatever is permissible from the findings of said inquisition.

8 (l) Because the proceedings before said inquisition do not take place in any court in the due course of the administration of justice.

(m) Because by the settled principles of the common law the ascertainment of the fact of sanity or insanity, at any stage of the proceedings in a legal investigation, was a function of the trial court; that is, of the court having jurisdiction of the crime itself and of the criminal, whether before or after arraignment, before or after conviction, or before or after judgment, or after conviction and before execution; and that the settled and orderly course of procedure was the summoning of a jury and the trial of this issue under the forms of law by the introduction of evidence under the rulings of the judge of said court, whose duty it was to instruct the jury upon the law of the issues involved, and to aid them in making a verdict.

6. Petitioner then and there, acting in behalf of said Elizabeth Nobles as aforesaid, in said written motions to the court, further alleged that each and every one of said proceedings, as well as the right to the court's process for compel[illegible]g the attendance of witnesses and the right to all the other processes and proceedings usually incident to trials in the superior courts of the State, was essential to due process of law for the ascertainment of the truth of the issue of insanity tendered to the court, and was essential to due process of law within the meaning of the Constitution of the United States, thus making these distinct claims among others as constitutional rights and exceptions, viz:

(a) Said section of the Georgia Code, 4666, does not establish a judicial tribunal and does not afford due process of law.

(b) It is the constitutional right of said Elizabeth Nobles to have a trial on the issue of insanity raised under the proceedings presented and tendered for that purpose, at any stage of the proceedings, and par-
9 ticularly either before judgment or after, and to have such trial in the court having jurisdiction of her and her case; and a denial of such right is a denial of and will deprive her of her life without due process of law.

(c) It is an inalienable right and immunity of said Elizabeth Nobles not to receive judgment or execution while insane, and a denial of such trial and proceedings is a denial and abridgement of Elizabeth Nobles' rights, privileges, and immunities as a citizen of the United States, claiming all of said rights, privileges, immunities, processes, and proceedings, and making such exceptions for the said Elizabeth Nobles as a citizen of the United States under its Constitution, and particularly by virtue of the 14th amendment of the Constitution of the United States.

7. Petitioner shows that from the judgment of the court overruling and denying said motions he, as next friend of said Elizabeth Nobles, tendered a bill of exceptions and secured thereon a writ of error to the supreme court of Georgia, carrying up to the latter court for review all the records and proceedings in said case, where on March 12th, 1897, a judgment was rendered affirming the judgment of the superior court of Twiggs County.

8. Petitioner shows that said writ of error was secured on July 9th, 1896, and that since said time and pending the hearing of said case in the supreme court of Georgia said death sentence was superseded and suspended till on April 3rd, 1897, the judge of the superior court of Twiggs County in vacation and at chambers fixed the 23rd day of April, 1897, as the day for the execution of said sentence and the infliction upon said Elizabeth Nobles of the penalty of death.

9. Petitioner presents with this application a complete and certified transcript of the record of said case in the supreme court of Georgia, and a transcript showing the proceedings in the superior court
10 of Twiggs County subsequent to said judgment of affirmance by the supreme court of Georgia. To all of said records reference is prayed.

10. Petitioner says that said decision of the supreme court of Georgia was adverse to the claims of petitioner made for said Elizabeth Nobles, and that said court is the highest court of law or equity in said State in which a decision could be had between petitioner, next friend for said Elizabeth Nobles, and the State of Georgia.

Wherefore, the premises considered, petitioner prays that a writ of error be issued out of the Supreme Court of the United States, directed to the supreme court of the State of Georgia, requiring the latter court to certify and send up to the former court all the records and proceedings in said case, to the end that justice may be done in the premises and the aforesaid judgment of the supreme court of Georgia may be reversed and declared null and void, and that such other orders and judgments may

be had, and such other proceedings in that behalf, as may be proper and necessary.

This April 10th, 1897.

W. W. BAUGHN,
*Next Friend of Elizabeth Nobles, by his Attorneys,*
MARION W. HARRIS,
W. C. GLENN,
D. W. ROUNTREE.

Writ of error allowed as prayed for, to operate as a supersedeas, and returnable according to law upon bond being furnished in the sum of two hundred and fifty dollars approved according to law.

This April 15, 1897.

JOHN M. HARLAN,
*Associate Justice of the United States Supreme Court.*

Filed in office April 21, 1897.

Z. D. HARRISON, *C. S. C. Ga.*

11 W. W. BAUGHN, NEXT FRIEND of Elizabeth Nobles, *vs.* THE STATE OF GEORGIA. | Writ of error from the United States Supreme Court to the supreme court of Georgia.

Know all men by these presents that we, W. W. Baughn, as principal, and J. F. Means, as surety, are held and firmly bound unto the defendant, the State of Georgia, in the full and just sum of two hundred and fifty dollars to be paid to said defendant and its proper officers, attorneys, and agents, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this April 15th, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately at the supreme court of the State of Georgia, in a suit pending in said court between said W. W. Baughn, as next friend of Elizabeth Nobles, plaintiff in error, and the State of Georgia, defendant in error, a judgment was rendered against said W. W. Baughn, as next friend of Elizabeth Nobles, and the said W. W. Baughn, next friend as aforesaid, having obtained a writ of error from the Supreme Court of the United States, intending to urge the same and file a copy thereof in the clerk's office of the said supreme court of Georgia to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Georgia, citing and admonishing the said State of Georgia to be and appear at a session of the United States Supreme Court to be held at the Capitol in the city of Washington, D. C., thirty days from the date of the allowance and issuance of said writ of error:

Now, the condition of the above obligation is such that if the said W. W. Baughn, next friend as aforesaid, shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make the

said plea good, then the above obligation to be void, else to remain
12 in full force and virtue.

W. W. BAUGHN. [SEAL.]
By his attorney MARION W. HARRIS.
J. F. MEANS. [SEAL.]

Sealed and delivered in presence of—
W. H. BURDICK,
W. E. DUNWOODY,
*Not. Pub., Bibb Co., Ga.*
[SEAL.]

Approved by—
EMORY SPEER, *U. S. Dist. Judge.*

This bond approved this April 17th, 1897.

JOHN M. HARLAN,
*Asso. Justice S. C. U. S.*

UNITED STATES OF AMERICA,
*Southern District of Georgia, ss:*

I, H. H. King, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the Honorable Emory Speer, who signed and approved the above bond, is and was at the time of signing the same a judge of the district court of the United States for the southern district of Georgia, duly commissioned and qualified, and that full faith and credit ought to be given to his acts and attestations given as such.

In witness whereof I have hereto set my hand and seal of said court this fifteenth day of April, A. D. 1897.

[SEAL.] H. H. KING, *Clerk.*
By LENOIR M. ERWIN, *Deputy Clerk.*

Filed in office April 21, 1897.

Z. D. HARRISON, *C. S. C. Ga.*

13 ELIZABETH NOBLES, BY W. W. BAUGHN, next friend, plaintiff in error, *vs.* THE STATE OF GEORGIA, DEFENDANT IN ERROR. } In error to the supreme court of the State of Georgia.

*Assignment of errors.*

Afterwards, to wit, on May 15th in the year 1897, at the Capitol in Washington, and in the Supreme Court of the United States, comes Elizabeth Nobles, by her next friend, W. W. Baughn, and says that in the record and proceedings in the supreme court of the State of Georgia in the above-entitled cause there is manifest error in this:

(1) That the supreme court of the State of Georgia erred in affirming the judgment of the superior court of Twiggs County in denying to Elizabeth Nobles a trial by jury in said court, as a function of the said court, upon the question of sanity or insanity at the time when the issue was tendered, and before sentence was pronounced in response to the question as to why sentence of death should not be then imposed upon her.

This judgment of the supreme court of the State of Georgia, affirming the judgment of the superior court of the county of Twiggs, was a denial to Elizabeth Nobles of due process of law, such as is required by Section I, Article XIV, of the amendments to the Constitution of the United States; and the court erred in not holding and deciding that at this stage of the proceedings, before sentence was pronounced, when the issue of insanity was tendered, that it was the duty of the superior court of the county of Twiggs, and an essential to due process of law under the
14 above-cited article that the same should be tried and disposed of under the regular forms of administration of justice in the superior courts of the State of Georgia, where all issues of fact are tried by a jury under the direction of the court.

(2) That the supreme court of the State of Georgia erred in affirming the judgment of the superior court of Twiggs County, in denying to Elizabeth Nobles a trial by a jury in said court, as a function of the said court, upon the question of sanity or insanity, at the time when the issue was tendered, and after sentence was pronounced.

This judgment of the supreme court of the State of Georgia, affirming the judgment of the superior court of the county of Twiggs, was a denial to Elizabeth Nobles of due process of law, such as is required by Section I, Article XIV, of the amendments to the Constitution of the United States; and the court erred in not holding and deciding that at this stage of the proceedings after sentence was pronounced, when the issue of insanity was tendered, that it was the duty of the superior court of the county of Twiggs, and an essential to due process of law under the above-cited article, that the same should be tried and disposed of under the regular forms of administration of justice in the superior courts of the State of Georgia, where all issues of fact are tried by a jury under the direction of the court.

(3) Because the supreme court of the State of Georgia erred in holding and deciding that "there is no law of force in this State which makes it incumbent upon a judge of the superior court, at the time when judgment is to be entered, or after it has been entered, to allow or order a judicial investigation concerning the mental condition of one against whom a lawful verdict of guilty has been rendered in a capital case, and who has thereby become subject to the penalty of death; nor in either instance is a refusal by such judge to enter upon an investigation of this kind, with
or without the aid of a jury, a denial to the *the* prisoner of "due
15 process of law."

Plaintiff in error says that it is and was by the settled principles of the law of the land a right on part of a defendant charged with and convicted of a crime not to be sentenced if insane, and not to have a sentence executed if the same be imposed, and that a judicial investigation of the mental condition of one against whom a lawful verdict of guilty has been rendered in a capital case, at the time when sentence is to be imposed, is an essential to "due process of law," in ascertaining whether or not said sentence should be imposed, and when imposed, whether or not the same should be enforced, and that a refusal by a judge to enter upon an investigation of this kind, with the aid of a jury or without the aid of a jury, is denial of due process of law.

(4) That the supreme court of the State of Georgia erred in holding that the provisions of the code of the State of Georgia relating to inquisitions in such matters are sufficiently comprehensive to cover all cases where the alleged insanity begins at any time after the rendition of the verdict of guilty.

This holding was erroneous because the provisions of the code relating to inquisitions in such matters are not judicial proceedings; do not take place before any judicial tribunal; there is no judge who is to preside and rule upon the law and the evidence; there is no method of compelling the attendance of witnesses; there is no provision for a review of the proceedings; because no jury is empanelled in any court; because the trial of this sort of issue is a function of a trial court; because no rules of evidence nor methods of proceedings are provided for the drawing and summoning and empanelling of a jury; because no judge or presiding officer is charged with the duty of instructing the jury; because said proceedings are not known to the common law for the ascertainment of facts involved, and because the supreme court of the State of
16 Georgia has held that said proceedings is not a judicial proceeding, but is a mere inquisition from which there is no appeal.

For each and all of these reasons, if the proceedings contemplated by the code of the State of Georgia are sufficiently comprehensive to cover all cases where the insanity begins at any time after the rendition of the verdict of guilty, the said proceedings do not afford such due process of law as is required by Section 1, Article XIV, of the amendments to the Constitution of the United States, and the holding that there is no other method of procedure under the law of the State of Georgia is a denial of due process of law within the meaning of said Section 1, Article XIV, of the amendments to the Constitution of the United States.

(5) The supreme court of the State of Georgia erred in holding against the plaintiff in error upon the ground that it is a right, privilege, and immunity of Elizabeth Nobles not to receive judgment or execution while insane, and a denial to her of such trial and proceedings as are judicial in their character is a denial and abridgment of Elizabeth Nobles' rights, privileges, and immunities as a citizen of the United States, within the meaning of Section 1, Article XIV, of the amendments to the Constitution of the United States.

(6) Because the supreme court of the State of Georgia erred in holding that a refusal to enter upon an investigation of this kind tendered in this case, without the aid of a jury, is not a denial to the prisoner of "due process of law."

Plaintiff in error says that when the suggestion of insanity in bar of sentence is made, that it is the duty of the tribunal having jurisdiction of the case to ascertain in some mode and manner, either with or without the aid of a jury, the truth of the issue tendered, and that a refusal to ascertain in any manner is a denial of due process of law within the meaning
17 of Section 1, Article XIV, of the amendments to the Constitution of the United States.

(7) The supreme court of the State of Georgia erred in holding that a refusal to enter upon an investigation into the insanity of the prisoner when about to be sentenced, when the suggestion of such insanity

is made without the aid of a jury is not a denial to the prisoner of due process of law.

Plaintiff in error says that where according to the settled proceedings of the State for the ascertainment of matters of fact in the courts, a method other than a jury is provided, that whenever any issue is tendered involving a question of fact in a case over which a court has jurisdiction, and while it has jurisdiction, it is a denial of due process of law not to ascertain the facts in the ordinary manner provided by the law of the State, and that in this case a failure or refusal to enter upon an investigation without the aid of a jury was a denial to the prisoner of due process of law.

(8) That the supreme court of the State of Georgia erred in holding that it is no denial of due process of law for the courts of the State of Georgia and for the superior court of the county of Twiggs to refuse in any way to pass upon the issue involved, the court holding in this case that there was no duty of any character whatever upon the superior court of the county of Twiggs to investigate the issue at all, either by the judge alone or by the judge and jury combined.

(9) The supreme court of the State of Georgia erred in not reversing the judgment of the superior court of the county of Twiggs denying to defendant an investigation into her sanity, when the same was tendered both before the imposition of sentence and after its imposition, and erred in not holding and deciding that the failure of the superior court of the county of Twiggs to investigate the issue tendered both before
18 and after sentence was imposed was a denial to Elizabeth Nobles of due process of law, and a denial of a right, privilege, and immunity of the said Elizabeth Nobles as a citizen of the United States under Section I, Article XIV, of the amendments to the Constitution of the United States.

Wherefore plaintiff in error prays that the judgment of the supreme court of the State of Georgia aforesaid, may be reversed, annulled, and made to hold for nothing, and that she may be restored to all things which she has lost by reason of said judgment, etc., and that such other order, judgment, and direction be had from this honorable court to the supreme court of the State of Georgia as may be necessary and proper in the premises.

MARION HARRIS,
*Macon, Ga.*
W. C. GLENN,
DANIEL W. KOUNTREE,
*401-2-3-4-5-6 Temple Court, Atlanta, Ga.,*
*Counsel for Plff. in Error.*

Filed in office April 21, 1897.

Z. D. HARRISON, *C. S. C. Ga.*

19. GEORGIA, TWIGGS COUNTY:

Be it remembered that at the April term of the Superior Court of Twiggs County, said court having been regularly and legally adjourned from its regular April sitting to the 23rd day of June, 1896, at which time said court was in session, there came on to be heard before said court, his honor, C. C. Smith, judge of said court, then and there pre-

siding, the case of The State vs. Elizabeth Nobles, said case being an indictment for murder against said named Elizabeth Nobles, said indictment having been found and returned by the grand jury of said county at a special term of said court held on the 9th, 10th, and 11th days of July, 1895, at which said special term of the court said Elizabeth Nobles was tried, convicted, and sentenced upon said indictment, the court sentencing said Elizabeth Nobles to death. The said sentence of death having been regularly and legally suspended and superseded by the order of the court, the case came on to be heard before the court on said 23rd day of June, as aforesaid, for the purpose of passing the sentence of death by the court upon the said Elizabeth Nobles in said stated case. Whereupon, in open court, upon said 23rd day of June, and immediately before the sentence of death was imposed by the court in said stated case upon the said Elizabeth Nobles, W. W. Baughn, who is here the plaintiff in error, tendered and presented to the court, the said W. W. Baughn appearing in behalf of the said Elizabeth Nobles as her next friend, a certain petition or motion, of which the following is a true, correct, and exact copy, to wit:

| | |
|---|---|
| THE STATE<br>*vs.*<br>ELIZABETH NOBLES. | In Twiggs superior court. Indictment, trial, and conviction for murder at July special term, 1895. |

And now comes W. W. Baughn, who appears as next friend of
20 and for the said named defendant, Elizabeth Nobles, for the purpose of making this application to the court, and coming at the April term of said court being now in session on the 23rd day in June, 1896, the said named defendant being before the court for the purpose of being sentenced to death in accordance with the verdict of guilty rendered in said stated case, now by his attorneys at law, Marion Harris and Glenn & Roundtree, who are the attorneys of record in said stated case for the said Elizabeth Nobles, and before the sentence of death is passed upon her by the court, objects and says that the court should not and ought not to impose the sentence of death upon said Elizabeth Nobles for the following reasons, to wit:

1st. Because, as petitioner here avers, the said Elizabeth Nobles is now insane.

2nd. Because the said Elizabeth Nobles being now insane it is contrary to the policy of the law and is illegal that the sentence of death should be imposed upon her by the court.

And petitioner further says that under article 14 of the amendment to the Constitution of the United States it is provided as follows: "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioner says that due process of law means law in its regular course of administration through courts of justice, and that by the fourteenth amendment above quoted, while the States have power to deal with crime within their borders, no State can deprive any person of equal and impartial justice under the law; and that law in its regular course of administration through courts of justice is due process, and unless

the same take place through courts of justice the constitutional
21 requirement above quoted is nullified.

Petitioner, therefore, especially sets up and claims the right to due process of law through its regular administration through courts of justice, under and by virtue of the constitutional guarantee under the 14th amendment to the Constitution of the United States above quoted.

Petitioner says that it is essential to due process of law within the meaning of the above requirement that a jury be impanelled on the issue now tendered by this petition, and that trial take place before a judge of the superior court of the State of Georgia, according to the due and regular form of proceedings in our courts. Whenever an issue of fact is made in a superior court in the State of Georgia the trial of the questions thereby raised is a function of the superior court of the county having jurisdiction, and that the trial of the question raised by this petition is a function of the superior court of Twiggs County, in which said court the said Mrs. Nobles was convicted of murder.

Petitioner further says that the proceedings contemplated under section 4666 of the Code of Georgia are not due process of law for these reasons, to wit:

1st. Because the same does not take place in any court of this State.

2nd. Because no rules of evidence or method of procedure are prescribed in such inquisition, and no proper method for the drawing, summoning, and empanelling a jury, and for the subpœnaing and examination of witnesses is provided.

3rd. Because no judge or presiding officer is charged with the function of ruling in or out evidence which may be tendered on said issue.

4th. Because no judge or presiding officer is provided in said proceeding whose duty it is to instruct the jury on the law involved in
the questions raised and to make rulings on evidence which may
22 be tendered for or against the person said to be insane.

5th. Because there is no method of moving for a new trial or of correcting any errors which may take place in said proceeding.

6th. Because said proceeding is one not known to the common law in ascertaining the facts involved according to the settled principles of the law of the land.

7th. Because the supreme court of the State of Georgia has held that the said proceeding is in no sense a judicial proceeding, but is a mere inquisition from which there is no appeal.

8th. Because no manner of review whatever is permissible from the findings of said inquisition.

9th. Because the proceedings before said inquisition do not take place before a court in the due course of the administration of justice. And petitioner says that the inquisition provided for is a denial by the State of such due process of law as is guaranteed by the Constitution of the United States, and petitioner especially claims the privilege and right, under the United States Constitution, to have due process of law for the ascertainment of the truth of the issue now here tendered to the court.

Petitioner further says that by the settled principles of the common law the ascertainment of the fact of sanity or insanity at any stage of the proceedings in the course of a legal investigation was a function of the trial court; that is, of the court having jurisdiction of the crime

itself and of the criminal, whether before or after arraignment, before or after conviction, or after conviction and before execution, or before or after judgment, and that the settled and orderly course of procedure was the summoning of a jury and a trial of this issue under the
23 forms of law, by the introduction of evidence under the rulings of the judge of the said court, and whose duty it was to instruct the jury upon the law of the issues involved and to aid them in making a verdict. And petitioner says that each and all and every one of these proceedings named, and also the right to the court's process for the compelling the attendance of witnesses to testify upon said issue, as well as such other proceedings and process and rights as are usually incident to trials before the superior courts of the State, are essential to due process of law within the meaning of the Constitution of the United States, and petitioner now here claims the right to such proceedings under and by virtue of the 14th amendment to the Constitution of the United States.

Wherefore, petitioner, now in behalf of the said Elizabeth Nobles, whom petitioner avers is mentally incapacitated because of her present insanity to take any legal steps in her own behalf, the premises considered, prays the court for a trial by jury of the said question of insanity; that the court cause jurors to be regularly summoned and impanelled to try said issue, and that such other proceedings be had in that regard as are usually incident to trials in said court; and that petitioner have the right to the court's process to compel the attendance of witnesses, and to such other processes as may be right and necessary, and that said sentence be postponed and suspended till the final adjudication of the question raised by this petition.

MARION HARRIS,
GLENN & ROUNDTREE,
*Attorneys for Petitioner.*

24 GEORGIA, BIBB COUNTY:

In person comes before the undersigned, a notary public in and for said county, Tom W. Loyless, who, on his oath, says that the allegations of fact set forth in the foregoing petition are true.

TOM W. LOYLESS.

Sworn to and subscribed before me this June 20th, 1896.

G. H. DOLVIN,
*Not. Pub., Bibb County, Ga.*

After argument heard upon the said petition or motion, the court then and there passed an order denying and overruling the same upon each and every ground therein taken and set out and denying and refusing each and every prayer of said petition or motion; to which ruling, order, and judgment of the court the said petitioner or movant then and there excepted and now here excepts and assigns the same as error.

Whereupon the court then and there, notwithstanding the objections urged and set forth in said petition or motion, sentenced the said named Elizabeth Nobles to death, to be executed on the 7th day of August, 1896, to which sentence and judgment of the court over said objections urged as aforesaid, petitioner or movant, W. W. Baughn, as next friend as aforesaid, then and there excepted and now here excepts and assigns the same as error.

And be it further remembered: After the court had imposed said sentence of death upon the said Elizabeth Nobles, as aforesaid, and on said 23rd day of June, 1896, while the said court was still in session, the said W. W. Baughn, who is here the plaintiff in error, then, as next friend of the said Elizabeth Nobles, tendered and presented to the said
25 court another certain petition or motion, of which the following is a true, correct, and exact copy, to wit:

THE STATE } In Twiggs superior court. Indictment, trial, and
*vs.* } conviction for murder at July special term,
ELIZABETH NOBLES. } 1895.

And now comes W. W. Baughn, who appears as next friend of and for the said named defendant, Elizabeth Nobles, for the purpose of making this application to the court, and coming at the April term of said court, being now in session on the 23rd day in June, 1896, said named defendant having in open court on said named day been sentenced to death by the court in accordance with the verdict rendered in the above-stated case, the date for the execution upon the said Elizabeth Nobles of the said sentence of death having been fixed by the court for the 7th day of August, 1896, and coming now by his attorneys at law, Marion Harris and Glenn & Roundtree, who are the attorneys of record in said stated case for the said Elizabeth Nobles, respectfully sheweth to the court the following facts:

1st. That the said Elizabeth Nobles is now insane.

2nd. That being now insane it is contrary to the policy of the law and is illegal that the sentence of death this day imposed as aforesaid by the court should be executed upon the said Elizabeth Nobles.

And petitioner further says that under article 14 of the amendment to the Constitution of the United States it is provided as follows: "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Petitioner says that due
26 process of law means law in its regular course of administration through courts of justice, and that by the 14th amendment above quoted, while the States have power to deal with crime within their borders, no State can deprive any person of equal and impartial justice under the law, and that law in its regular course of administration through courts of justice is due process, and unless the same take place through courts of justice the constitutional requirement above quoted is nullified.

Petitioner therefore specially sets up and claims the right to due process of law through its regular administration by courts of justice, under and by virtue of the constitutional guarantee under the 14th amendment to the Constitution of the United States above quoted.

Petitioner says that it is essential to due process of law, within the meaning of the above-quoted requirement, that a jury be impanelled on the issue now tendered by this petition, and that a trial take place before a judge of the superior court of the State of Georgia according to the due and regular forms of proceedings in our courts. Whenever an issue of fact is made in a superior court in the State of Georgia a trial

of the questions thereby raised is a function of the superior court of the county having jurisdiction, and that the trial of the question raised by this petition is a function of the superior court of Twiggs County, in which said court said Elizabeth Nobles was convicted of murder.

Petitioner further says that the proceedings contemplated by section 4666 of the code of Georgia are not due process of law for these reasons, to wit:

1st. Because the same does not take place in any court of this State.

2nd. Because no rules of evidence or methods of procedure are prescribed in said inquisition, and no proper method for the drawing, summoning, and impanelling a jury and for the subpœnaing and examination of witnesses is provided.

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3rd. Because no judge or presiding officer is charged with the function of ruling in or out evidence which may be tendered on said issue.

4th. Because no judge or presiding officer is provided in said proceeding whose duty it is to instruct the jury on the law involved in question, and to make rulings on evidence which may be tendered for or against the person said to be insane.

5th. Because there is no method of moving for a new trial, or of correcting any errors which may take place in said proceeding.

6th. Because the said proceeding is one not known to the common law in ascertaining the facts involved according to the settled principles of the law of the land.

7th. Because the supreme court of the State of Georgia has held that the said proceeding is in no sense a judicial proceeding, but is a mere inquisition from which there is no appeal.

8th. Because no manner of review whatever is permissible from the findings of said inquisition.

9th. Because the proceedings before said inquisition do not take place before a court in the due course of the administration of justice. And petitioner says that the inquisition provided for is a denial by the State of such due process of law as is guaranteed by the Constitution of the United States, and petitioner especially claims the privilege and right, under the United States Constitution, to have due process of law for the ascertainment of the truth of the issue now here tendered to the court.

Petitioner further says that by the settled principles of the common law the ascertainment of the fact of sanity or insanity at any stage of the proceedings in the course of a legal investigation was a function of the trial court; that is, of the court having jurisdiction of the crime itself and of the criminal, whether before or after arraignment, before or after conviction, or before or after judgment, or after conviction and before execution; and that the settled and orderly course of procedure was the summoning of a jury and the trial of this issue under the forms of law, by the introduction of evidence under the rulings of the judge of said court, and whose duty it was to instruct the jury upon the law of the issues involved and to aid them in making a verdict. And petitioner says that each and every one of and all of these proceedings and also the right of the court's process for the purpose of compelling the attendance of witnesses to testify upon said issue, as well as such other proceedings and process as are usually incident to trials before the superior courts of the State, are essential to due process of law within the meaning of the

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Constitution of the United States, and petitioner here and now claims the right to such proceedings under and by virtue of the 14th amendment to the Constitution of the United States.

Wherefore, petitioner now in behalf of the said Elizabeth Nobles, whom petitioner avers is mentally incapacitated because of her present insanity to take any legal steps in her own behalf, the premises considered, prays the court for a trial by jury of the said question of insanity; that the court cause jurors to be regularly summoned and impanelled to try said issue, and that such other proceedings be had in that regard as are usually incident to trials in said court; and that petitioner have the right to the court's process to compel the attendance of witnesses and to such other process as may be right and necessary, and that said sentence of death be suspended and superseded till the final adjudication of the question raised by this petition.

MARION HARRIS,
GLENN & ROUNDTREE,
*Attys. for the Petitioner.*

29 GEORGIA, BIBB COUNTY.

In person comes before the undersigned, a notary public in and for said county, Tom W. Loyless, who on oath says that the allegations of fact set forth in the foregoing petition are true.

TOM W. LOYLESS.

Sworn to and subscribed before me this 20th day of June, 1896.

G. H. DOLVIN,
*Not. Pub., Bibb Co., Ga.*

After argument heard upon the said petition or motion the court then and there passed an order denying and overruling the same upon each and every ground and point therein set out and taken and denying and refusing each and every prayer of said petition or motion, to which ruling, order, and judgment of the court the said petitioner or movant, the said W. W. Baughn, as next friend of the said Elizabeth Nobles, then and there excepted and now here excepts and assigns the same as error.

Upon the hearing of both of said petitions or motions petitioner read in support thereof to the court the affidavit of E. H. Fitzpatrick, which, with the formal and immaterial portions thereof omitted for the sake of brevity, is in substance and in material part as follows:

Dated May, 1896, Bibb County, Ga. Deponent is a citizen of Twiggs County, Ga., and well knows Elizabeth Nobles, who is under conviction for murder in Twiggs superior court; within the last day or two deponent has seen said Nobles and talked with her and observed her actions; that from her talk and conversation and actions and her appearance, deponent judges that said Mrs. Nobles is an insane woman; that she does not talk intelligently and has the appearance of a mental
30 imbecile. Deponent further says that from the facts above set out and for other reasons deponent says that said Mrs. Nobles is now insane. Said affidavit properly signed, executed, and attested.

Also the affidavit of S. E. Jones, which, with the formal and immaterial portions thereof omitted for the sake of brevity, is in substance and material part as follows:

Dated June 23rd, 1896, Twiggs County, Ga. Deponent well knows E. H. Fitzpatrick, of said county, who has recently made affidavit expressing opinion that Mrs. Elizabeth Nobles, convicted of murder at a July special term, 1895, of Twiggs superior court, is insane. Deponent has known said Fitzpatrick for a number of years; deponent knows his reputation for truth and veracity. Such reputation is good. From what deponent knows of that reputation, as well as from deponent's own knowledge of said Fitzpatrick, deponent would believe him on his oath, and said Fitzpatrick is a man of good character. Said affidavit properly signed, executed, and attested.

And now comes the said W. W. Baughn, as next friend of the said Elizabeth Nobles, as aforesaid, and coming within twenty days from the date of the rendition of said orders and judgments of the court complained of, and coming within the time allowed by law, tenders this his bill of exceptions and prays that the same may be signed and certified as true and correct; and that the clerk of the superior court of Twiggs County be required to make out a complete copy of such portions of the record in said case, and such portions only as are in this bill of exceptions specified, and certify the same as such, and transmit the same, together with this bill of exceptions, to the present term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

31 No evidence being introduced upon the hearing of said two motions save the two affidavits of Tom. W. Loyless, verifying the said two motions, and the affidavits of E. H. Fitzpatrick and S. E. Jones, read in support of said motions, no evidence besides that is necessary to elucidate the errors complained of.

And the said plaintiff in error hereby specifies such parts of the record in said case and such parts only as are material to a clear understanding of the errors complained of, to wit:

The order and judgment of the court denying and overruling the said motion or petition presented and tendered before the said sentence of death was imposed by the court.

The order and judgment of the court denying and overruling the said petition or motion presented and tendered after the said sentence of death was imposed.

The said sentence of death.

MARION HARRIS,
*Post-office address, 556 Cherry st., Macon, Ga.,*
GLENN & ROUNDTREE,
*Post-office address, Temple Court, Atlanta, Ga.,*
*Attorneys for Plaintiff in Error.*

I do certify that the foregoing bill of exceptions is true and contains all of the evidence and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Twiggs County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified,

and certify the same as such, and cause the same to be transmitted
32 to the present term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This July 9th, 1896.

C. C. SMITH, *J. S. C. O. C.*

GEORGIA, TWIGGS CO.,
CLERK'S OFFICE, SUPERIOR COURT,
*July 27, 1896.*

I, D. S. Faulk, clerk of the superior court in and for the county and State aforesaid, hereby certify that the foregoing pages is the original bill of exceptions in the case of The State vs. Elizabeth Nobles, a copy of the same being retained in my office.

Witness my hand and affixed seal this 27th July, 1896.

[SEAL.] D. S. FAULK, *Clerk.*

GEORGIA, TWIGGS COUNTY.

Due and legal service of the within and foregoing bill of exceptions and writ of error acknowledged. Copy received. All other and further service and notice waived.

This 16th day of July, 1896.

TOM EASON, *Sol. Gen.*

Number seven, Oconee, October term, 1896. Elizabeth Nobles, by next friend, W. W. Baughn, vs. The State. Original bill of exceptions. Filed in office July 17th, 1896. D. S. Faulk, clerk. Filed in office July 30, 1896. Logan Bleckley, D. C. S. C. Ga. Marion Harris, Glenn & Roundtree, attys.

33 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
*Atlanta, March 19, 1897.*

I hereby certify that the foregoing pages hereto attached contain a true copy of the bill of exceptions in the case therein stated as appears from the original now of file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[SEAL.] Z. D. HARRISON, *Clerk.*

34 Order and judgment of the court upon the motion made before the sentence was imposed by the court. At the April term, 1896.

Upon hearing the foregoing motion and the affidavits of E. H. Fitzpatrick and S. E. Jones read in support thereof, it is ordered by the court that said motion be overruled and the prayers therein refused, and such is hereby done. Let the said motion be filed in office and this order entered on the minutes.

In open court, June 23rd, 1896.

C. C. SMITH, *J. S. C.*

Entered.

Order and judgment of the court upon the motion made after the sentence of death was imposed by the court. *At the April term, 1896.*

Upon hearing the foregoing motion and the affidavit of E. H. Fitzpatrick and S. E. Jones read in support thereof, it is ordered by the court that said motion be overruled and the prayers therein refused; and such is hereby done. Let the motion be filed and this order entered on the minutes of the court.

In open court, June 23rd, 1896.

C. C. SMITH, *J. S. C. O. C.*

Entered.

35 THE STATE *vs.* ELIZABETH NOBLES. } Murder in Twiggs superior court. At July special term, 1895, and verdict of guilty.

Whereupon the verdict of the jury in the above-stated case finding you, the defendant, Elizabeth Nobles, guilty of the offense of murder, it is therefore ordered, considered, and adjudged by the court that you, the defendant, be, by the sheriff or his lawful deputy, taken from the bar of said court and safely conveyed to the jail of Bibb County, where you shall be safely and securely kept and confined until the day of your execution or such time as may be necessary to convey you to such place of execution, when you shall, by said sheriff or his lawful deputy, be taken and safely conveyed to said county of Twiggs, when you shall, on the 7th day of August, 1896, between the hours of 10 o'clock a. m. and three o'clock p. m., be, by the said sheriff or his lawful deputy, be privately hanged by the neck until you are dead. Said place of execution shall be within one-half mile of the court-house in Jeffersonville, in Twiggs Co.

The ordinary of Twiggs Co. is directed to have prepared a suitable scaffold and appliances for your execution. Said execution shall be in private and witnessed only by such clergymen, relatives, and friends as you may desire, and the executing officers, and such numbers of guards as may be necessary. It is further ordered that Drs. E. McNair and J. G. Slappey attend said execution and determine when death shall supervene. And may God have mercy on your soul.

Witness my hand and seal officially this the 23rd day of June, 1896. In open court, April adjourned term, 1896.

C. C. SMITH, *J. S. C. O. C.*

36 GEORGIA, TWIGGS COUNTY.
CLERK'S OFFICE, SUPERIOR COURT.
*July 27, 1896.*

I certify that the annexed and foregoing 4 pages contain a full, true, and complete transcript of the record of the case in said court, wherein the State, plaintiff, and Elizabeth Nobles, defendant, as the same appears from the records and files of said court: That Elizabeth Nobles, the plaintiff in error in said case, has paid all the costs that have accrued in said case, and given bond and security, as required by law.

I further certify that the original bill of exceptions in said case (a copy of the same being retained in my office) is this day forwarded, with this

exemplification, to the clerk of the supreme court, and that the term, 18 , of the superior court of said county was adjourned on the day of 18 .

Given under my official signature and the seal of said court.

[SEAL.] D. S. FAULK, *Clerk.*

No. 7, Oconee, October term, 1896. Transcript of record. W. W. Baughn, next friend, vs. the State. Filed in office July 30, 1896. Logan Bleckley, D. C. S. C. Ga.

37 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
*Atlanta, March 19, 1897.*

I hereby certify that the foregoing pages hereto attached contain a true copy of the transcript of record in the case therein stated, as appears from said transcript now of file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[SEAL.] Z. D. HARRISON, *Clerk.*

38 BAUGHN, NEXT FRIEND,
*vs.*
THE STATE.

By the court, per Cobb, justice.

1. There is no law of force in this State which makes it incumbent upon a judge of the superior court at the time when judgment is to be entered, or after it has been entered, to allow, or order, a judicial investigation concerning the mental condition of one against whom a lawful verdict of guilty has been rendered in a capital case and who has thereby become subject to the penalty of death; nor in either instance is a refusal by such judge to enter upon an investigation of this kind, with or without the aid of a jury, a denial to the prisoner of "due process of law."

2. The provisions of the code relating to inquisitions in such matters are sufficiently comprehensive to cover all cases where the alleged insanity begins at any time after the rendition of the verdict of guilty.

Judgment affirmed.

All the justices concurring.

39 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
*Atlanta, March 19, 1897.*

I hereby certify that the foregoing page hereto attached contains a true copy of the decision of the supreme court of Georgia in the case therein stated, as appears from the original now on file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[SEAL.] Z. D. HARRISON, *Clerk.*

40 SUPREME COURT OF THE STATE OF GEORGIA,
*Atlanta, Ga., March 12, 1897.*

The honorable supreme court met pursuant to adjournment.
Present,
The following judgment was rendered:

W. W. BAUGHN, NEXT FRIEND,
*versus*
THE STATE.

This case came before this court upon a writ of error from the superior court of Twiggs County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the justices concurring.
Bill of costs, $10.00.

SUPREME COURT OF THE STATE OF GEORGIA,
*Clerk's Office, Atlanta, March 19, 1897.*

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that Marion Harris, esq., paid the above bill of costs.
Witness my signature and the seal of said court affixed the day and year last above written.
[SEAL.] Z. D. HARRISON, *Clerk.*

41 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
*Atlanta, March 19, 1897.*

I hereby certify that the foregoing pages hereto attached contain a true copy of the entire record in the case of Baughn, next friend, vs. The State, as appears from the records and files of this office.
Witness my signature and the seal of said court hereto affixed the day and year above written.
[SEAL.] Z. D. HARRISON, *Clerk.*

42 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
*Atlanta, May 4, 1897.*

I hereby certify that the foregoing pages hereto attached contain the entire record and proceedings in the case therein stated, as appears from the records and files of this office.
Witness my signature and the seal of said court hereto affixed the day and year above written.
[SEAL.] Z. D. HARRISON, *Clerk.*

(Indorsement on cover:) Case No. 16589. Georgia supreme court. Term No., 376. Elizabeth Nobles, by her next friend, W. W. Baughn, plaintiff in error, vs. The State of Georgia. Filed May 17, 1897. Supreme Court U. S., clerk's office. Received May 6, 1897.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1897.

## No. 376.

ELIZABETH NOBLES BY HER NEXT FRIEND, W. W. BAUGHN, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

*CERTIFIED COPY OF THE OPINION OF THE SUPREME COURT OF THE STATE OF GEORGIA.*

2 No. 7, Oconee.—October term, 1896.

BAUGHN, NEXT FRIEND,
*vs.*
THE STATE.

By the court, per COBB, Justice:

1. There is no law of force in this State which makes it incumbent upon a judge of the superior court at the time when judgment is to be entered, or after it has been entered, to allow or order a judicial investigation concerning the mental condition of one against whom a lawful verdict of guilty has been rendered in a capital case, and who has thereby become subject to the penalty of death; nor in either instance is a refusal by such judge to enter upon an investigation of this kind, with or without the aid of a jury, a denial to the prisoner of "due process of law."
2. The provisions of the code relating to inquisitions in such matters are sufficiently comprehensive to cover all cases where the alleged insanity begins at any time after the rendition of the verdict of guilty.

3 COBB, Justice:

At a special term of the superior court of Twiggs County in July, 1895, Elizabeth Nobles was tried for the offense of murder, and upon conviction was sentenced to death. The sentence "having been

legally suspended and superseded by the order of the court, the case came on to be heard before the court" on June 23, 1896, "for the purpose of passing sentence of death in accordance with the verdict of guilty rendered." At this term Baughn, the plaintiff in error, as the next friend of the condemned woman, appeared, and in her behalf objected to the sentence of death being passed, on the ground that she was then insane, and in his application prayed "the court for a trial by jury of the said question of insanity; that the court cause jurors to be regularly summoned and impanelled to try said issue, and that such other proceedings be had in that regard as are usually incident to trials in said court; that petitioner have the right to the court's process to compel the attendance of witnesses and to such other process as may be right and necessary, and that said sentence be postponed and superseded until the final adjudication of the question." The court declined to entertain the application and refused "each and every prayer" thereof, and fixed the time for the execution of the sentence on August 7, 1896. Thereupon Baughn, in the same capacity as above stated, by petition alleged that Elizabeth Nobles was then insane, and that it was contrary to the policy of the law and illegal that the sentence of death should be executed, and prayed "that the court cause jurors to be regularly summoned and impanelled to try said issue, and that such other proceedings be had in that regard as are usually incident to trials in said court, and that petitioner have the right to the court's process to compel the attendance of witnesses and such other process as may be right and necessary, and that said sentence of death be suspended and superseded until the final adjudication of the question." The court refused to entertain the petition, and denied "each and every prayer" of the same. The error complained of is the refusal of the judge to entertain these petitions and grant the prayers therein contained, it being claimed that the question of the insanity of the convicted woman should be inquired of by a jury in the superior court according to the forms of procedure usually incident to trials in that court; that the refusal of the judge to submit this question
4 to a jury is a denial to the prisoner of due process of law, and that there is no proceeding authorized by any statute law of Georgia which amounts to due process of law in such cases, the procedure provided in penal code 1027 not being judicial in its nature. "A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged, provided the act so charged as criminal was committed in the condition of such lunacy or insanity; but if a lunatic has lucid intervals of understanding, he shall answer for what he does in those intervals, as if he had no deficiency." (Penal Code, § 35.) The section quoted clearly shows that under the law of this State no person can be legally convicted of a crime committed while in a moment of irresponsibility growing out of an unsound mind. If the person charged with the crime desires to avail himself of the provisions of this law and urge his insanity as a defense to a crime for which he stands indicted, no special plea of any character is necessary, as this defense will be allowed under the plea of not guilty. (Danforth vs. The State, 75 Ga., 614.) "Whenever the plea of insanity is filed, it shall be the duty of the court to cause the issue on that plea to be first tried by a

special jury, and if found to be true, the court shall order the defendant to be delivered to the superintendent of the asylum, there to remain until discharged in the manner prescribed by law." (Penal Code, § 951.) This section secures to a person charged with a crime the right to have the question of his mental condition at the time of the trial inquired into before being required to plead to the indictment. (Long vs. The State, 38 Ga., 491.) "If, after any convict shall have been sentenced to the punishment of death, he shall become insane, the sheriff of the county, with the concurrence and assistance of the ordinary thereof, shall summon a jury of twelve men to inquire into such insanity. The following oath shall be administered to the jury, to wit: 'You, and each of you, do solemnly swear (or affirm) that you well and truly try this issue of insanity between the State and A. B., now condemned to die, and a true verdict give according to the evidence, so help you God.' If it be found by the inquisition of such jury that the convict is insane, the sheriff shall suspend the execution of the sentence and make report of the inquisition and suspension of the execution to the presiding judge of the circuit, who shall cause the same to be entered on the minutes of the superior court of the county where the conviction was had." (Penal Code, § 1047.) The sections above quoted embrace all of the law of force in this State which relate to the subject of an inquiry into the mental condition of a person charged with or convicted of a criminal offense. If insane at the time the act is committed he shall not be convicted. The section first above quoted gives him the right to have the question of his mental condition at this time inquired of strictly in accord with procedure usual in courts of justice in this State. Whether he be sane or insane at the time of the commission of the act, the section second above quoted provides for him a trial according to the usual rules of procedure of force in this State on the question of his mental condition at the time that he is placed on trial, and guarantees to him that he shall not be tried while he is in a condition of insanity. At every stage of the trial which an accused person could raise the question of his mental condition at common law before conviction, the law of force in this State gives the defendant the right to raise such question and accords to him an opportunity to have the question tried according to the procedure usual in the courts of the State. The question made in this record is, Can the prisoner after conviction, according to law, of a capital offense demand a trial by a jury in the superior court on the question of his mental condition in order that the insanity, if established, may operate to suspend the execution of the judgment in the case? The record shows that Elizabeth Nobles was convicted and sentenced to death in July, 1895, and that the sentence was not executed. She was called before the court in June, 1896, not for the purpose of being sentenced, because the sentence had been already imposed, but for the purpose of fixing a new time for the execution of the sentence. A person convicted of a capital offense is never sentenced under the law of this State but one time; the sentence is the conclusion of the record, and once entered the record is complete. It may be that the time fixed in the sentence expires, but the sentence stands in full force. Therefore the life of Elizabeth Nobles was absolutely forfeited by the verdict and

the judgment or sentence which was rendered in July, 1895, and if execution ever takes place it will be by virtue of this sentence,
6 though at a different time than that originally named. What is commonly referred to as a resentence is only the fixing of a new time for the execution of a sentence. The language of the penal code, section 1046, in reference to providing a time for the execution of the death sentence seems to be conclusive of the question that one sentence is all that is ever imposed in a capital case, and that that sentence is to be executed, either at the time fixed therein, or at such other time as the judge, or other lawful authority of this State, shall fix there*after*. "Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the presiding judge of the superior court where the conviction was had, on the application of the solicitor-general of the circuit, or other person prosecuting for the State, shall issue a habeas corpus to bring such convict before him; or if such convict be at large, said judge, or any judicial officer of this State, may issue a warrant for his apprehension; and upon the convict being brought before the judge, either by habeas corpus or under such warrant, he shall proceed to inquire into the facts and circumstances of the case, and if no legal reason exists against the execution of the sentence he shall sign and issue a warrant to the sheriff of the proper county, commanding him to do execution of such sentence at such time and place as shall be appointed therein, which the sheriff shall do accordingly; and the judge shall cause the proceedings to be entered on the minutes of the superior court of the county." In the case of Harris vs. The State, 2 Ga., 290, where complaint was made that the prisoner was improperly sentenced under the provisions of the law contained in the section above quoted, the court say: "The sentence was suspended by the supersedeas consequent upon the first bill of exceptions, until the same was affirmed by this court by the dismissal of the case. It was then in full force. The court below, therefore, had the right under the code, upon habeas corpus, to command the sheriff to do execution of the sentence." If we are correct in this interpretation, then, on June 23, 1896, when the prisoner was brought before the court for the purpose of being sentenced, she was already under sentence of death, the same having been pronounced in July, 1895, and therefore an application for an investigation into her mental condition could have been had according to
7 the exact terms of the law as embodied in penal code §1047, providing for such investigation; that is, she was a convict who had been sentenced to the punishment of death, and her presence before the court was simply for the purpose of fixing a time for the execution of such sentence. This being true, it is not necessary to decide what would be the right of a person who demanded an investigation into his mental condition in order to establish the fact that he became insane after verdict and before sentence. If it were necessary to decide this question it could be with propriety held that the prisoner was not entitled to be heard upon this question between verdict and sentence, because there was no necessity for such hearing. Without sentence the verdict can never be carried into effect. The moment that sentence is pronounced the right to apply for an investigation under section 1047 of the penal code is complete.

We therefore treat this as the application of a person convicted and sentenced, to have the question of her mental condition tried by a jury in the superior court, according to the forms of procedure incident to investigations in that court. Has a convict the right, after verdict and sentence, and his life according to "due process of law" thus forfeited to the State, to demand, as "due process of law," that his mental condition shall be inquired into, in order to determine whether the judgment of the court shall go into execution? "Inasmuch as the stage of criminal procedure known as pleading has been passed at the time when, after conviction, the issue as to insanity in bar of sentence is asked for, the point as to a constitutional right may not be involved." Carr's Trial of Lunatics, p. 87. In the case of Laros vs. Commonwealth, 84 Pa. St., pp. 200, 210, the court say: "The last three assignments of error raise a single question, upon the power of the court to inquire by inspection and per testes into the insanity of the prisoner since verdict. We have no precedents in this State, known to us, how the inquiry shall be conducted when such a plea in bar of sentence is put in. It seems to us, however, that no right of trial by jury is involved in the question. A jury having found a verdict against the plea of insanity, when set up as a defense to conviction, subsequent insanity can not be set in disproof of conviction. The plea at this stage is only an appeal to the humanity of the court to postpone the punishment until a recovery takes place, or as a merciful dispensation.

8 The rights of the prisoner as an offender on trial for an offense are not involved. He has had the benefit of a jury trial, and it is now the court only which must be satisfied on the score of humanity. If the right of trial by jury exists at all, it must exist at all times, no matter how often the plea is repeated alleging insanity occurring since the last verdict. Such a right is inconsistent with the due administration of justice. There must be a sound discretion to be exercised by the court. If a case of real doubt arise, a just judge will not fail to relieve his own conscience by submitting the fact to a jury."

It is in the power of any person interested in the prisoner to call for an investigation under Penal Code, § 1047, or the judge himself may order the investigation. The purpose of the legislature evidently was to carry out the principle referred to in the decision above quoted, and provide a method for the trial of a question which simply involved a plea to the humanity of the court to postpone the punishment of an insane person until a recovery takes place. In the case of Jones vs. The State, 13 Ala., 153, the court, in dealing with the question of insanity at the time of trial, say: "Although we are of opinion that the facts disclosed in the bill of exceptions might well have warranted the preliminary inquiry as to the prisoner's mental condition, yet this must be left to the sound discretion of the court. If, amid the mystery and veil which surrounds the phenomena of mental aberration, so difficult to penetrate, the judge should be mistaken and try an insane man (as we think has been done in the case before us), it will present a case in which there may be a strong appeal to executive clemency."

In the case of Spann vs. The State, 47 Ga., 551, in referring to the law now contained in the Penal Code, § 1047, Judge McCay says: "The

stay for insanity seems to depend on the discretion of the judge at common law." (1 Hale, 370.) "He may call in a jury if he pleases. The whole proceeding is merely a stay of execution, and is based rather upon the public will and a sense of propriety than on any right in the prisoner. * * * The whole proceeding is rather an inquiry based on public propriety and decency than a matter of right." While the question as to whether the section under consideration was due process of law is not involved directly in the case of Carr vs. The State, 98 Ga.,
9 89, still in passing upon the right of the superior court to review a proceeding under that section by certiorari, the majority of the court recognized the proceeding as being "rather an inquiry based on public propriety and decency than upon any right of the defendant." The effect of that decision was to hold that no judicial investigation was required to be given to a person as a matter of right, and that all investigations after conviction were simply to inform the court imposing sentence as to the mental condition of the prisoner for the sole purpose of determining whether it would be consistent with public decency and propriety to take away the life of a person who had not mind enough to realize what was being done.

There being no law of force in this State which authorizes or requires the judge of the superior court to enter into an investigation of the mental condition of Elizabeth Nobles at the time and in the manner prayed for in the petition filed in her behalf, the refusal by the judge to enter into such investigation was not a denial to her of "due process of law," and there was, therefore, no error in declining to entertain such petition, and in denying "each and every prayer" therein.

Judgment affirmed.

10 CLERK'S OFFICE SUPREME COURT OF GEORGIA,
*Atlanta, Ga., Nov. 4, 1897.*

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the supreme court of Georgia in the case therein stated.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[SEAL.] Z. D. HARRISON, *Clerk.*

11 (Indorsed:) Case No. 16589. Supreme Court U. S. October term, 1897. Term No. 376. Elizabeth Nobles, by her best friend, W. W. Baughn, vs. The State of Georgia. Certified copy of opinion of supreme court of Georgia. Office Supreme Court U. S. Filed Nov. 6, 1897. James H. McKenney, Clerk.